



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup
Professionals

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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on November 29, 2007

[Approved on January 10, 2008]

Prepared by: Terry Wood

Meeting Location: Massachusetts Department of Environmental Protection, Central Regional Office, Worcester, MA.

1. **Call to Order:** Janine Commerford called the meeting to order at 12:43 p.m. Also present were Gail Batchelder, Kirk Franklin, Christophe Henry, Gretchen Latowsky, Paul Mullen, and Debra Phillips. Committee members absent: Deborah Farnsworth, Kelley Race, Robert Luhrs and Debra Stake. Staff members present were Allan Fierce, Brian Quinlan, Lynn Read, Ron Viola, Terry Wood and Al Wyman. Also present was Wesley Stimpson, the LSP Association's Executive Director. At 1:45 p.m., Kevin Sweeney, the Board's exam consultant, joined the meeting.
2. **Announcements:** None.
3. **Previous Minutes:** The draft minutes of the meeting held on October 31, 2007 were approved.
4. **Old Business**

A. Status of CRTS

At Ms. Commerford's request, the chair of each CRT reported on progress made during the last month.

Mr. Fierce asked the Committee members if they wanted to add a symbol on the active case list to denote when the Committee has approved a CRT's request to add sites beyond the sites listed in the original complaint to an investigation. After discussion, the consensus of the

Committee was to track this information. The Committee asked the Board staff to consider what specific information should be tracked regarding expansion requests by CRTs and come back to the Committee next month with a proposal. *[As reflected in Section 4.D of these minutes, the Committee voted later in the meeting not to require CRTs to seek permission of the Committee to add additional sites to investigations; therefore, there will be no such information to track on the active case list.]*

B. Update re: Web Site Subcommittee

Ms. Commerford stated that the subcommittee has not met.

C. Update re: recommended decisions from DALA

Ms. Commerford stated that on October 12, 2007, Chief Magistrate Shelly Taylor contacted Ms. Commerford stating that recommended decisions in the Board's two pending disciplinary cases would be issued within thirty days. Ms. Commerford stated that no recommended decisions have been received. She stated that she left Ms. Taylor a voicemail message yesterday asking for a status update, but has not heard back.

D. Review of draft policy regarding CRT requests to add additional sites to disciplinary investigations

Ms. Wood stated that, at the October meeting, the Committee asked her to draft a written policy regarding when CRTs need to request permission to add additional sites beyond the sites listed in the original complaint to a disciplinary investigation. She presented a draft written policy.

The Committee members then discussed whether the Committee should require CRTs to seek permission of the Committee to expand investigations or not. Some of the arguments presented for requiring CRTs to seek permission included:

- to try to ensure consistency among CRTs regarding the number of sites reviewed during an investigation;
- asking CRTs to seek permission of the Committee would require CRT members to consider if the additional sites are necessary and why;
- to keep the Committee in charge of the direction of disciplinary investigations and to demonstrate that the Committee follows a considered process;
- to allow the LSPA and others to better understand why disciplinary investigations sometimes expand beyond the sites named in the original complaint; and
- requiring Committee permission to expand investigations may also allow the Committee to better control whether the timelines in Policy #2007-1: *Expediting Disciplinary Investigations and Proceedings* are being met.

Some of the arguments presented for not instituting such a policy were:

- the policy is unnecessary because the Committee is likely to grant all CRT requests to expand investigations;
- the CRTs know better than the Committee whether the additional sites are necessary to an investigation;

- a CRT should be free to add additional sites if an LSP has a pattern of substandard work in order to eliminate the possibility that a separate complaint may be filed against the same LSP in the future;
- such a policy might leave private complainants at a disadvantage because a private party, unlike MassDEP, has no way of knowing whether an LSP should be identified in the complaint as having a pattern and practice of bad work;
- the Board investigators and attorneys are able to determine, based on their knowledge of past cases, if good grounds exist to expand an investigation so Committee permission is unnecessary;
- it is in the public interest to allow CRTs to determine whether an LSP has performed other substandard work that should be investigated rather than restricting the number of sites a CRT may investigate; and
- the more public discussion at Committee meetings regarding disciplinary cases, the greater the chance that the identities of LSPs under investigation might become known.

After discussion, a motion was made and seconded to not institute a policy requiring CRT's to seek permission of the Board. The motion passed by a vote of four (Batchelder, Latowsky, Mullen and Franklin) to two (Commerford and Henry). Ms. Phillips did not vote.

5. New Business

A. Discussion of Executive Director's six-month summary of preliminary results re: LSP Board Policy #2007-01: *Expediting Disciplinary Investigations and Proceedings*

Mr. Fierce stated that the policy went into effect on May 23, 2007, and it states that the Executive Director shall summarize preliminary results after it has been in effect for six months. Therefore, he prepared a memo. He stated that, since May 23, 2007, two new complaints have been received and there have been no delays in processing them. He stated that, of the thirteen investigations underway when the policy took effect six months ago, only one investigation has been completed. The investigation of that complaint was underway when the policy was instituted and took a total of eleven months to complete. He added that the remaining twelve investigations that were in process on 5/23/07 remain under investigation but almost all of them are being actively worked on, and some are nearly complete.

He stated that, although there is not a significant amount of data from which to draw any major conclusions at this time, he has made the following observations:

- The loss of Debbie Phillips' services over the last several months has reduced the Board's capacity to serve on CRTs; and
- Case delays (equal to or greater than one month) may have occurred for five reasons:
 - (i) Staff attorneys are tied up on other cases;
 - (ii) Staff investigators are tied up on other cases;
 - (iii) Board members are tied up on other cases;

- (iv) Board members actively working on cases hit busy periods at their jobs and take timeouts from active investigations for brief periods; and
- (v) Board members need to be replaced on CRTs due to recusal (or due to leaving the Board).

Ms. Commerford stated that the draft memo should be edited to note that two CRTs are actively negotiating with the LSPs and settlement proposals in those cases have already been presented to the Committee. Ms. Latowsky stated that the investigation of case 06C-03 has been delayed by the CRT's attempts to negotiate with the LSP. Other Committee members noted that other investigations have also been delayed by difficulties scheduling interviews with LSPs.

Mr. Fierce will edit the memo to reflect comments made during the discussion.

6. Future Meetings

The Committee will next meet on January 9th, 2008 at Weston and Sampson Engineers, Inc. in Peabody. The Committee will also meet on February 7th, 2008 at a location to be determined.

7. Adjournment: The meeting was adjourned at 2:10 p.m.